

FILED

JAN 29 2014

Clerk, U.S District Court
District Of Montana
Missoula

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

RODNEY A. EDMUNDSON,

CV 13-00032-M-JCL

Plaintiff,

vs.

ORDER

FLATHEAD COUNTY SHERIFF'S
DEPARTMENT, DOCTOR DUSING,
and TAMMY BOWEN,

Defendants.

Plaintiff Rodney Edmundson, a pro se prisoner litigant, proceeding in forma pauperis filed his Amended Complaint against the Flathead County Sheriff's Department, Doctor Dusing, and Tammy Bowen. (Doc. 6.) After conducting a prescreening of the amended complaint pursuant to 28 U.S.C. §§ 1915, 1915A, this Court ordered the Amended Complaint served upon Defendant Bowen and recommended the dismissal of Defendants Dusing and Flathead County Sheriff's Department. (October 15, 2013 Order, Doc. 8.) Defendant Bowen filed an Answer to the Amended Complaint on December 5, 2013 (Answer, Doc. 11.) A Scheduling Order was issued December 6, 2013. (Scheduling Order, Doc. 13.) Judge Christensen adopted the Court's recommendation on January 3, 2014

and dismissed Defendants Dusing and the Flathead County Sheriff's Department and all claims except those against Defendant Bowen arising from her alleged denial of Tylenol on June 14 and 15, 2012. (Order Adopting F&R, Doc. 15.) Despite this not being a final or appealable order, Edmundson filed a Notice of Appeal of this Order on January 15, 2014. (Notice of Appeal, Doc. 16.) On January 16, 2014, pursuant to the consent of the parties, this matter was assigned to this Court for all further proceedings. (Doc. 20.)

Edmundson's appeal was docketed in the Ninth Circuit Court of Appeals on January 15, 2014 and a briefing schedule was set. *See 9th Circuit Court of Appeals Docket #: 14-35034.* The filing fee was not paid.

On January 29, 2014, Edmundson filed a "Motion and Request for Order of Transcript." (Doc. 22.) The motion requests transcripts from the Court's January 3, 2014 Order, a written copy of the Ninth Circuit Rules, a waiver of fees, and excerpts of record. The motion will be denied because there are no transcripts for this matter and pursuant to Circuit Rule 30-1.2, pro se litigants need not file excerpts of record. Edmundson can obtain a copy of the Ninth Circuit by sending a written request to the Ninth Circuit.

To the extent, Edmundson's motion can be construed as a motion for leave to proceed in forma pauperis on appeal, it is denied. The Federal Rules of

Appellate Procedure provide:

[A] party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless:

(A) the district court-before or after the notice of appeal is filed-certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding;

Fed.R.App.P. 24(a)(3)(A).

Analogously, 28 U.S.C. § 1915(a)(3) provides “[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.” The good faith standard is an objective one. *Coppedge v. United States*, 369 U.S. 438, 445 (1962). A plaintiff satisfies the “good faith” requirement if he or she seeks review of any issue that is “not frivolous.” *Gardner v. Pogue*, 558 F.2d 548, 551 (9th Cir. 1977) (quoting *Coppedge*, 369 U.S. at 445). For purposes of section 1915, an appeal is frivolous if it lacks any arguable basis in law or fact. *Neitzke v. Williams*, 490 U.S. 319, 325, 327 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1225 (9th Cir. 1984).

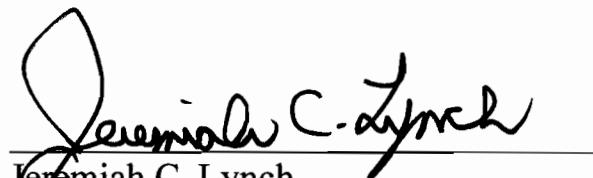
The appeal in this action has not been made pursuant to 28 U.S.C. § 1292 (interlocutory decisions) and is otherwise without merit. Edmundson is attempting to appeal a non-appealable interlocutory order. *Fletcher v. Gagosian*, 604 F.2d

637, 638 (9th Cir. 1979) (if a district court dismisses less than all claims in an action or fewer than all defendants, such a dismissal is not a final order appealable under 28 U.S.C. § 1291). In addition, the appeal of the January 3, 2014 Order has no basis in law or fact. No reasonable person could suppose an appeal would have merit. Edmundson's appeal was not taken in good faith and Edmundson should not be permitted to proceed in forma pauperis.

Accordingly, it is HEREBY ORDERED that:

1. Edmundson's "Motion and Request for Order of Transcript (Doc. 22) is denied.
2. Pursuant to Fed.R.App.P. 24(a)(3)(A), the Court finds that Edmundson's appeal was not taken in good faith and he should not be permitted to proceed in forma pauperis on appeal.
3. Pursuant to Fed.R.App.P. 24(a)(4), the Clerk of Court is directed to serve this order on the parties and the Court of Appeals for the Ninth Circuit.

DATED this 23rd day of January, 2014.



Jeremiah C. Lynch
United States Magistrate